

NO. \_\_\_\_\_

USPLS, LC,

**Plaintiff**

v.

**PATRICK GAAS AND  
DANIEL SHANK,**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION  
AND REQUEST FOR DISCLOSURE**

**TO THE HONORABLE JUDGE OF SAID COURT:**

USPLS, LC ("Plaintiff") brings causes of action against Patrick Gaas and Daniel Shank ("Defendants") as follows:

**I.**

**DISCOVERY CONTROL PLAN AND REQUEST FOR DISCLOSURE**

1. Pursuant to Rule 190.2 of the Texas Rules of Civil Procedure, discovery is intended to be conducted under Level 2 of this Rule.

2. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, each of the Defendants is requested to disclose, within 50 days of service of this request, the information and materials described in Rule 194.2.

**II.**

**PARTIES**

3. Plaintiff. USPLS, LC is a Texas limited liability company with its offices and principal place of business in Houston, Harris County, Texas.

4. Defendants. Patrick E. Gaas is an individual who may be served at 700 Louisiana Street, Suite 4300, Houston, TX 77002. Daniel F. Shank is an individual who may be served at 700 Louisiana Street, Suite 4300, Houston, TX 77002.

### **III.**

#### **JURISDICTION AND VENUE**

5. Jurisdiction. This is a suit for damages in excess of \$500.00, exclusive of interest. Accordingly, this Court has subject matter jurisdiction over this action pursuant to TEXAS GOV'T CODE § 24.007.

6. Venue. Venue of this action in Harris County, Texas is proper pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.002(a), 15.005 and 15.035. All or a substantial part of the events or omissions giving rise to the claims against the Defendants occurred in Harris County. This is where the Contract was to be performed and this is where the Defendants reside or are doing business.

### **IV.**

#### **FACTS**

7. Plaintiff is the assignee of causes of action from a professional employment agency, and references to Plaintiff refer to both entities.<sup>1</sup> In January 2017, Patrick Gaas ("Gaas"), Daniel Shank ("Shank"), and Person C (collectively, Gaas, Shank, and Person C will be referred to as "GS&C", and Gaas and Shank will be referred to as "Defendants") contacted Plaintiff for assistance in searching for new employment for themselves and those individuals in their group of other professionals who might also want to search for new employment for themselves (the "Group").

8. Because GS&C identified to Plaintiff a relatively large number of professionals in the Group, and described below-market hourly billing rates for Group professionals, Plaintiff advised GS&C that they should expect the process of searching for new employment to be difficult and time-consuming, requiring persistence, patience, dedication and the commitment of one year or more of time. Plaintiff advised GS&C that Plaintiff would be willing to collaborate with GS&C in making such a commitment, that Plaintiff would invest its time and resources for one year and contribute its reputation and experience to GS&C's pursuit, and would act as GS&C's agent in connection with their

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<sup>1</sup> In this Facts section most references to Plaintiff will include the assignor professional employment agency.

employment discussions with prospective firms, only if GS&C promised Plaintiff that Plaintiff would act as their agent in connection with their employment discussions with firms, so that Plaintiff's opportunity to receive compensation from firms for its services for GS&C would be protected.

9. On January 19, 2017, Plaintiff proposed the following contractual terms to govern the relationship between and among Plaintiff, GS&C and the Group:

This confirms that the undersigned – Pat Gaas, Dan Branch [sic] and [Person C], individually and as representatives of a group...– agree to work with [Plaintiff] exclusively in connection with our group's search for...employment with a new...firm. [Plaintiff] will be our exclusive agent with respect to all firms with which we engage in employment discussions for the period of one year from the date hereof, except those firms we have listed below with which we have engaged in direct employment discussions on our own behalf within the past six months. [Plaintiff] has advised us that its sole compensation is a contingent fee paid by its...client in the event it acquires all or part of our group, and we therefore agree promptly to take whatever steps are necessary or appropriate to acknowledge and confirm the exclusive nature of our agency with [Plaintiff].

10. Under this contract proposal, Plaintiff would look solely to potential employers for its compensation, GS&C would pay Plaintiff nothing for Plaintiff's services, and Plaintiff would also pay expenses. As consideration for Plaintiff's investment and commitment, GS&C would for one year use Plaintiff as their agent with respect to all firms (with the exception of one specifically identified firm that GS&C later designated) with which they engaged in employment discussions, and GS&C would not use any other agent. If GS&C accepted employment with such firms, Plaintiff would be compensated pursuant to its fee agreement with such firm(s), and if GS&C did not accept employment with such firms, Plaintiff would receive no compensation.

11. The underlying concept of this proposal was similar to professional contingent-fee arrangements, about which GS&C were expertly familiar, in that GS&C would be protected from incurring financial loss and Plaintiff would risk receiving no compensation in the event of a negative result. Plaintiff risked far more, however, because, unlike contingent fee professionals, whose expertise,

judgment, and competence weigh heavily in the outcome of a particular matter, Plaintiff had essentially no control, and GS&C had essentially complete control, over both the process of employment discussions and the outcome. GS&C and all members of the Group were free to prioritize which firms to be contacted in which order, and to accept or reject the firms with which they engaged, or did not engage, in employment discussions, and they were in sole and exclusive control of the negotiation of the terms of any such employment, including the financial terms and the constituency of any members of the Group who might join them. Each of GS&C, and each other member of the Group, was also at all times in complete and exclusive control of his or her personal employment decision.

12. Because Plaintiff was bearing most of the risk, it was in Plaintiff's interest to act as GS&C's agent with respect to as many firms as possible, especially since GS&C would always have the right to reject employment offers, in which case Plaintiff would receive no compensation. Plaintiff recognized, however, that GS&C might want to exclude one or more firms from the operation of the contract and GS&C's obligation to use Plaintiff as their agent. Accordingly, Plaintiff's proposed terms quoted above offered GS&C the opportunity to list excluded firms, meaning firms for which Plaintiff's agency would not apply.

13. On January 23, 2017, GS&C agreed to engage Plaintiff on Plaintiff's terms, without excluding any firms. On January 26, Plaintiff again expressly offered GS&C the opportunity to list any firms that would be excluded from the proposed contract and Plaintiff's agency.

14. On January 27, 2017, GS&C stated in writing that "we have agreed to engage [Plaintiff] (in a group capacity)," and that "Excluded firms are \_\_\_\_." (redacted, and hereinafter referred to as the "Sole Excluded Firm"). On January 23, 2017, and again on January 27, 2017, GS&C agreed to the terms proposed by Plaintiff (the "Contract") and there was only excluded firm – the Sole Excluded Firm.

15. Pursuant to the Contract, GS&C agreed that for a period of one year they "will use" Plaintiff as their agent with respect to "all firms" with which they engage in employment discussions,

except for the Sole Excluded Firm. The Contract required GS&C and the Group to use Plaintiff as their agent with respect to “all firms,” except the Sole Excluded Firm, no matter how, when or by whom such firms were contacted or procured, or whether any such firms or their respective members had been previously contacted, known to, or imagined by, GS&C. Except for the Sole Excluded Firm exception, the Contract does not limit or restrict the term, “all firms,” in any way. GS&C also agreed “promptly to take whatever steps are necessary or appropriate to acknowledge and confirm the exclusive nature of our agency with [Plaintiff].”

16. By specifically appointing Plaintiff as their *agent* with respect to “all firms,” except the Sole Excluded Firm, GS&C promised that Plaintiff would have the right to act as agent for GS&C and the Group in connection with all of their employment discussions with “all firms,” except the Sole Excluded Firm. By specifically appointing Plaintiff as their *exclusive agent* with respect to “all firms,” except the Sole Excluded Firm, GS&C also promised that Plaintiff would have the *exclusive* right, to the exclusion of any and all other agents, to act as agent for GS&C and the Group in connection with all their employment discussions with “all firms,” except the Sole Excluded Firm. Plaintiff’s agency rights pursuant to the Contract with respect to “all firms,” except the Sole Excluded Firm, precluded GS&C from representing themselves, or otherwise acting on their own behalf in contravention of Plaintiff’s agency rights, with respect to any such firms, and also precluded any other agent’s representation of GS&C with respect to any such firms. GS&C relinquished, pursuant to the Contract, any and all rights they had to represent themselves without Plaintiff’s agency, or to use other agents, in all employment discussions with “all firms,” except the Sole Excluded Firm. GS&C therefore agreed that, during the one-year term of the Contract, they and the Group would not engage in employment discussions with any firm except the Sole Excluded Firm, without using Plaintiff as their agent.

17. Pursuant to the Contract, Plaintiff agreed to invest one year assisting GS&C and the Group in their search for employment, with no certainty of compensation. GS&C had two, and only

two, obligations. First, GS&C were obligated for one year to use Plaintiff as their agent with respect to “all firms,” except the Sole Excluded Firm that GS&C designated, with which they engaged in employment discussions, and, in addition, GS&C could not use any other agent. Second, because Plaintiff’s representation of GS&C as their agent was a condition to Plaintiff’s entire compensation under its fee agreements, GS&C were also obligated to protect Plaintiff’s interest, upon request, by promptly acknowledging and confirming Plaintiff’s agency.

18. Immediately after the parties entered into the Contract, GS&C and Plaintiff together identified 23 prospective employer firms to be targeted by Plaintiff in connection with the search for employment by GS&C and the Group. After discussions with Plaintiff about strategies and which firms to approach in which order, GS&C designated eight of the 23 targeted employer firms as priority firms, to be contacted by Plaintiff first, because those eight firms came closest to meeting GS&C’s original specifications. GS&C instructed Plaintiff to defer contacting the remaining fifteen targeted firms. GS&C did not reject the fifteen deferred firms. To the contrary, GS&C advised Plaintiff that they wanted to keep all of their options open with respect to all fifteen deferred firms, but instructed Plaintiff not to contact any of such firms until further instructed to do so by GS&C. Consequently, Plaintiff initially focused only on the eight priority firms.

19. Plaintiff acted as agent for GS&C and the Group at all times in all of their employment discussions with all eight priority firms, and made a substantial commitment of time contacting, communicating and assisting in negotiations and discussions with all eight priority firms. GS&C and the Group were familiar with, had prior contacts or acquaintance with, and in some cases had close friends and colleagues at, six of the eight priority firms. Of these six priority firms that were previously known to GS&C, GS&C provided Plaintiff in advance with the names and contact information of the professionals they knew at two of such firms so that Plaintiff could reference these individuals when contacting such firms’ management and human resources personnel. Plaintiff made contact with both

of these firms on behalf of GS&C and the Group, but, after each firm conducted its own preliminary due diligence with respect to GS&C and the Group, neither firm decided to move forward. Of the other four priority firms previously known to GS&C, one indicated no interest and declined to move forward, and two eventually decided not to move forward after several in-person meetings, discussions, and negotiations, leaving only one priority firm previously known to GS&C. Of the two priority firms that were previously unknown to GS&C, one indicated no interest and declined to move forward. Therefore, there were two firms left—the sole remaining priority firm that was previously known to GS&C and the sole remaining priority firm that was previously unknown to GS&C—and each continued to engage in extensive employment discussions with GS&C and the Group, who were at all times represented by Plaintiff as their agent. Plaintiff had fee agreements in place with both such remaining two firms.

20. Of the eight priority firms with respect to which Plaintiff represented GS&C and the Group in all their employment discussions, therefore, six firms dropped out, and two priority firms (one previously known to GS&C and one previously unknown to GS&C) continued to engage in extensive employment discussions with GS&C and the Group. Both firms spent months engaged in extensive due diligence considerations and evaluation of financial, personnel and client information, and Plaintiff was closely involved in almost daily communications with GS&C and such firms. Both firms made written proposals offering employment to GS&C and certain other members of the Group, and both firms declared to Plaintiff and to GS&C that they were ready, willing and able to move forward, subject to customary conditions of final due diligence and clearance of potential client conflicts.

21. Contrary to Plaintiff's advice, GS&C purposely delayed for three weeks their response to the proposal of the first priority firm. GS&C advised Plaintiff that they delayed their response to the first priority firm because they were hoping the second priority firm would make a better offer. Because of such delay, the first priority firm proposed to GS&C that any transaction be deferred until after

January 1, 2018. GS&C also delayed in responding to the offer of the second priority firm, and was slow to provide requested conflicts information. GS&C advised Plaintiff that they delayed their response to the second priority firm, and were slow to provide requested conflicts information, because Gaas was “underwhelmed” about the level of personal compensation that he had been offered by the second priority firm. Because of such delay, the second priority firm made the same proposal to GS&C to defer any transaction until after January 1, 2018. GS&C’s delays in responding to both offers, against the advice of Plaintiff, caused employment discussions to stall with both priority firms, but GS&C did not reject either offer, and discussions with both firms remained open.

22. In addition to employment discussions engaged in with the two priority firms, GS&C also engaged in employment discussions, after the date of the Contract and without the initial knowledge or involvement of Plaintiff, with two of the fifteen deferred firms. When GS&C informed Plaintiff of these discussions, they assured Plaintiff that, in compliance with their obligation under the Contract to protect Plaintiff’s agency and exclusive agency, they had advised both such deferred firms that Plaintiff was acting as the agent of GS&C and the Group with respect to such employment discussions. GS&C placed Plaintiff in direct contact with representatives of one of such deferred firms, and advised Plaintiff that they had expressed to the other deferred firm, “that [Plaintiff] is in the deal to the full extent,” and that “we are working through [Plaintiff].”

23. At all times before September 25, 2017, GS&C confirmed to all firms with which they engaged in employment discussions that Plaintiff was acting as the agent and representative of GS&C and the Group. This included the two deferred firms that GS&C initially approached without Plaintiff’s knowledge. At no time before September 25, 2017 did GS&C state or suggest to Plaintiff or to any other person, to Plaintiff’s knowledge, that they or any member of the Group either denied, or were attempting somehow to revoke, the authority of Plaintiff to be their agent and representative in their employment discussions with any firm. GS&C never, before such date, stated or asserted to Plaintiff or



to any other person, to Plaintiff's knowledge, any claim or right whatsoever to engage in employment discussions with any firm on their own behalf, other than the Sole Excluded Firm, without the involvement, representation or agency of Plaintiff.

24. In early September 2017, about seven months into the one-year term of the Contract, GS&C advised Plaintiff that their then current employer had learned of their employment discussions with other potential employer firms and was forcing them to sever their employment and vacate their offices. GS&C advised Plaintiff that their first and highest priority was to resolve the terms of their severance from their existing firm and postpone the date on which they would be required to vacate their offices. They advised Plaintiff that after they negotiated the terms of their severance and postponed the date on which they would be required to move out of their offices, they would turn their attention back to their employment search. GS&C also informed Plaintiff that they had engaged legal counsel to represent them with respect to their severance from their existing firm. They stated that their relations with certain of their firm's existing partners had long been antagonistic, that these partners had become personally combative and that their dispute over their severance had become extremely heated and contentious. GS&C advised Plaintiff that they desired to insulate and protect Plaintiff from these circumstances and from any potential liability arising out of their severance, and advised Plaintiff that they were unilaterally terminating all contact with Plaintiff until their severance dispute was resolved. Plaintiff replied to GS&C that Plaintiff was unaware of any basis on which Plaintiff, by virtue of its representation of GS&C as their agent, could be found to have legal liability in connection with GS&C's severance dispute, but GS&C were insistent that they temporarily terminate communications with Plaintiff. During a period of more than three weeks thereafter, GS&C did not provide Plaintiff with even minimal information or updates about the status of their severance negotiations with their existing firm, about any further overtures relating to their remaining offers from the two priority firms or about their intentions with respect to further employment discussions with other priority or deferred firms.

Despite their assurances that they were only addressing their severance with their existing firm, and that they were not engaging in employment discussions, however, Plaintiff became suspicious. Plaintiff considered GS&C's actions to be highly unusual and uncharacteristically secretive, given that, for the preceding seven months, Plaintiff and GS&C had been in almost daily communication—whether by personal meetings, telephone conversations, texts or emails—regarding even the smallest details and developments in the ongoing process of their employment discussions. Therefore, after over two weeks of silence by GS&C, Plaintiff began calling and emailing GS&C on September 20, 2017 to get a status report, and on September 24, 2017, over three weeks after their last communication, sent an email asking GS&C, “Could you guys let me know what's going on? I've got a lot invested in this project, and no one is returning my calls ...” Finally, on September 25, 2017, GS&C responded in a teleconference with Plaintiff in which they notified Plaintiff for the first time that in early September, Gaas had secretly initiated, and Defendants and certain members of the Group had furtively engaged in, a series of employment discussions with an undisclosed firm (the “Undisclosed Firm”), without the knowledge or involvement of Plaintiff as their agent. Plaintiff later discovered that the Undisclosed Firm was among the original 23 targeted firms, and was specifically one of the fifteen deferred firms that GS&C had instructed Plaintiff to refrain from contacting until further notice. The Undisclosed Firm was not the Sole Excluded Firm, the Undisclosed Firm had not otherwise been excluded from the Contract, and Defendants were required under the Contract to use Plaintiff as their agent with respect to their employment discussions with the Undisclosed Firm.

25. Gaas stated during the September 25 teleconference that, even though GS&C and the Group had appointed Plaintiff as their agent and representative with respect to “all firms,” including the Undisclosed Firm, he believed GS&C were entitled under the Contract to initiate and engage in employment discussions on their own behalf with the Undisclosed Firm without using Plaintiff as their agent, stating: “I cashed in a personal chip I had with these guys, and with a previous relationship with

them.” Gaas also alleged in the September 25 teleconference that the Undisclosed Firm was always an “option” even before the date GS&C entered into the Contract with Plaintiff: “It was something that, I had not intended to proceed, but I knew it was there if I wanted it ... and that predated all of this ... I knew that that was an option that was available to us.” Gaas would not offer any explanation as to why GS&C did not exclude the Undisclosed Firm from the Contract when the Contract was entered into after twice being given the opportunity to do so by Plaintiff. Despite GS&C’s contractual obligation to use Plaintiff as their agent with respect to employment discussions with “all firms,” and even though they had previously protected Plaintiff’s interests with respect to eight firms with which they had prior personal and professional relationships—and had stated to Plaintiff that they had confirmed with two of such firms that Plaintiff was acting as the agent of GS&C and the Group—Gaas informed Plaintiff in the September 25 teleconference that Defendants had deliberately excluded Plaintiff from acting as their agent in employment discussions with the Undisclosed Firm, stating: “we didn’t want you to contact them because I already had a relationship with those guys.... It wasn’t a relationship that I needed a headhunter for.”

26. On September 25, 2017, immediately following the teleconference with GS&C, Plaintiff sent an email to GS&C attaching a copy of the Contract, and stating as follows: “[Plaintiff] has fully complied with the Contract, and also expects you to fully comply with the Contract. Specifically, [Plaintiff] is ready, willing and able to perform its obligations under the Contract with respect to [the Undisclosed Firm], and [Plaintiff] expects you to honor your obligations under the Contract to use [Plaintiff] as your exclusive agent in connection with any and all employment discussions with [the Undisclosed Firm]. Please be advised that [Plaintiff] will treat your failure or refusal to do so as a breach of the Contract, and will take whatever steps it deems necessary, with the advice of legal counsel, to protect its interests.” At the time Plaintiff sent this letter, Plaintiff did not know, because Defendants

had concealed from Plaintiff, that Defendants and certain members of the Group had already accepted employment with the Undisclosed Firm. GS&C did not respond to Plaintiff's letter.

27. In the September 25 teleconference, Gaas acknowledged that the Undisclosed Firm had extended employment offers to GS&C and the Group to open a Houston, Texas office for such firm. Gaas also stated that accepting the offers from the Undisclosed Firm was “probably the direction that we are going to go,” creating the implication that neither Defendants, nor any members of the Group, had yet made their final employment decision. Plaintiff later discovered, however, that, nearly two weeks earlier, on September 12, 2017, Defendants and possibly up to nine other members of the Group had already accepted employment with the Undisclosed Firm, and Defendants had purposely concealed their actions from Plaintiff, even in the September 25 teleconference.

28. On September 26, 2017, counsel for Plaintiff wrote a letter to the Undisclosed Firm asking it to negotiate a placement fee with Plaintiff and explaining that Plaintiff would file suit for damages if the parties could not reach an agreement. On September 28, 2017, the Undisclosed Firm responded, arguing that it had no contract, agreement, or understanding with Plaintiff and that Plaintiff had no involvement in introducing or facilitating any interaction between it and GS&C. The Undisclosed Firm refused to pay or negotiate a placement fee and even threatened to sue Plaintiff if it “interferes with [the Undisclosed Firm’s] relationship with [GS&C] and ... the other ... professionals [in the Group].”

29. In late September 2017, using Plaintiff as their agent, Person C and certain other members of the Group joined one of the priority firms, and said firm paid Plaintiff a fee pursuant to its fee agreement with Plaintiff.

**V.**  
**STATEMENT OF CLAIMS**

**Count I**  
**Breach of Express Contract**

30. The Contract is a valid and binding contract. Plaintiff performed its obligations under the Contract by representing—and being ready, willing and able to represent—GS&C and the Group as their agent in connection with their employment discussions with “all firms,” except the Sole Excluded Firm. Defendants breached the Contract in early September 2017 by purposely engaging, and continuing to engage, in employment discussions with the Undisclosed Firm, in violation of the express terms of the Contract. For over three weeks thereafter, Defendants concealed such employment discussions from Plaintiff in order to prevent Plaintiff from performing the Contract by acting as GS&C’s agent and the agent of other members of the Group, with respect to the Undisclosed Firm. Plaintiff was at all times ready, willing and able to perform pursuant to the Contract, including acting as the agent of GS&C and the Group with respect to their employment discussions with the Undisclosed Firm, and Plaintiff notified Defendants to that effect at the earliest possible opportunity, on September 25, 2017, when Plaintiff first became aware that Defendants had breached the Contract by denying Plaintiff’s right to act as their and the Group’s agent.

31. By accepting employment with the Undisclosed Firm on September 12, 2017, Defendants destroyed the entire subject matter of the Contract and made it impossible for Plaintiff to perform any further pursuant to the Contract. Therefore, Plaintiff’s damages are the maximum amount of compensation that Plaintiff would have received if Defendants had not rendered Plaintiff’s performance under the Contract impossible by destroying the subject matter of the Contract and eliminating Plaintiff’s entire consideration under the Contract. In addition to all of its actual damages, Plaintiff is entitled, by virtue of TEX. CIV. PRAC. & REM. CODE ANN. § 38.001, et seq., to recover all of Plaintiff’s reasonable attorneys’ fees and expenses from Defendants.

**VI.**  
**DAMAGES**

32. Defendants are jointly and severally liable to Plaintiff for all of its damages, including, but not limited to:

- (a) The maximum compensation Plaintiff would have earned if Defendants had not breached the Contract and prevented Plaintiff from performing;
- (b) Benefit of the bargain damages;
- (c) Lost time damages;
- (d) Special damages, including lost profits;
- (e) Consequential damages;
- (f) Incidental damages;
- (g) All economic damages;
- (h) Attorneys' fees and expenses;
- (i) Costs of court;
- (j) All of Plaintiff's other damages.

**VII.**  
**ATTORNEYS' FEES**

33. As a result of Defendants' conduct as described above, Plaintiff is entitled to recover from Defendants all of Plaintiff's reasonable and necessary attorneys' fees pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001.

**VIII.**  
**CONDITIONS PRECEDENT**

34. All conditions precedent to Plaintiff's right to recover its damages and its attorneys' fees have been performed, occurred, or have been waived. Presentment of Plaintiff's claim was made.

**IX.**  
**PRAYER**

35. WHEREFORE, PREMISES CONSIDERED, USPLS, LC requests that Defendants be cited to appear and answer, and that on final trial Plaintiff have judgment against Defendants for:

- (a) All of Plaintiff's damages;
- (b) Pre-judgment interest as provided by law;
- (c) Attorneys' fees, court costs, expert witness costs, copy charges, and deposition costs;
- (d) Post-judgment interest on all of the foregoing; and
- (e) Such other and further relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

**SNOW SPENCE GREEN LLP**

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